

**United States District Court
Southern District of Texas**

BASF Corporation,

Plaintiff,

vs.

**SNF Holding Company,
Flopam Inc., Chemtall Inc., SNF SAS,
SNF (China) Flocculant Co., Ltd.**

Defendants.

Case No.: 14-cv-02733

Jury Trial Demanded

**JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT
PURSUANT TO P.R. 4-3**

Pursuant to the Court's Scheduling Order (Dkt. 61) and P.R. 4-3, Plaintiff BASF Corporation (BASF) and Defendants SNF Holding Company, Flopam Inc., Chemtall Incorporated, SNF SAS, and SNF (China) Flocculant Co., Ltd. (Defendants) submit the following Joint Claim Construction and Prehearing Statement.

4-3(a)(1): Constructions of claim terms, phrases, or clauses on which the parties agree

At this time, there are no constructions for claim terms, phrases, or clauses of the Patents-in-Suit on which the Parties agree.

4-3(a)(2): Proposed constructions of disputed claim terms, phrases, or clauses

The proposed constructions for each of the disputed claim terms, phrases, or clauses of the Patents-in-Suit are attached below as Exhibit A. BASF's proposed constructions and citations to intrinsic and extrinsic evidence are attached below as Exhibit B. Defendants' proposed constructions and citations to intrinsic and extrinsic evidence are attached below as Exhibit C. To the extent that any party has identified intrinsic or extrinsic evidence in support of its construction that was not identified by the other party, the other party reserves its right to rely upon that evidence in support of its own construction or to rebut the other party's construction. In addition, the parties may use the cited intrinsic or extrinsic evidence in connection with the construction of any disputed term.

4-3(a)(3): Anticipated length of time for hearing

The claim construction hearing is currently scheduled for November 13, 2015. The Parties anticipate that the hearing will require no more than 4 hours.

4-3(a)(4): Witnesses

The Parties do not propose calling any fact or expert witnesses at the claim construction hearing. The Parties reserve the right to call fact or expert witnesses in order to rebut any fact or expert testimony offered in support of a Party's respective claim construction positions.

4-3(a)(5): Other issues

There are no other issues that the parties presently anticipate addressing at a prehearing conference prior to the Claim Construction Hearing, should that change the parties will inform the Court of the need for a prehearing conference.

Dated: July 16, 2015.

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CERTIFICATE OF SERVICE

I certify that the above document was served via email or the Court's CM/ECF system or by electronic mail to all counsel of record on July 16, 2015.

/s/Robert Riddle

Exhibit A
The Parties' Proposed Constructions

Claims(s)	Claim Term/Phrase	BASF's Proposed Construction	Defendants' Proposed Construction
1	whether the preamble is limiting: "A process for preparing high molecular weight polymers, which comprises"	The preamble is not a limitation	The preamble constitutes a limitation
1	"removing the gelatinous reaction mixture by injection"	No construction necessary—plain and ordinary meaning.	removing the gelatinous reaction mixture by injecting a pressure of at least 2 bar
1	"removing the gelatinous reaction mixture by injection of an inert gas"	No construction necessary—plain and ordinary meaning.	removing the gelatinous reaction mixture only by injection of inert gas alone

Exhibit B
BASF's Proposed Constructions

Claims(s)	Claim Term/Phrase	BASF's Proposed Construction	Intrinsic Evidence¹	Extrinsic Evidence
1	whether the preamble is limiting: "A process for preparing high molecular weight polymers, which comprises"	The preamble is not a limitation	<ul style="list-style-type: none"> • Claims 1-7 	<ul style="list-style-type: none"> • Defendants' Preliminary Invalidity Contentions and Disclosures served May 14, 2015. • IPR2015-00600, Petition. • IPR2015-00600, Decl. of Benny Freeman.
1	"removing the gelatinous reaction mixture by injection"	No construction necessary—plain and ordinary meaning.	<ul style="list-style-type: none"> • Claims 1-7 • Figure 1 • 1:19-25, 33-36, 53-55 • 2:1-4, 41-51 • 3:1-3 • 6:66-7:27 • 8:63-9:5 • 9:17-19, 39-40 • 9:62-63 • 10:18-19 • 10:50-60 • 11:13-20 • 11:42-50 • 12:1-8 • 12:29-37 • 12:60-67 • 13:21-29 • 13:52-59 	<ul style="list-style-type: none"> • Chambers Science and Technology Dictionary (1988) at 465. • McGraw-Hill Dictionary of Scientific and Technical Terms 4th Ed. (1989) at 964-65 • OED Online. Oxford University Press, from 2nd Ed. 1989 ("injection" "inject"). • IPR2015-00600, Petition. • IPR2015-00600, Decl. of Benny Freeman.

¹ Reference to the '329 patent specification are identified by figure number or patent column and lines.

			<ul style="list-style-type: none"> • 14:17-25 	
1	“removing the gelatinous reaction mixture by injection of an inert gas”	No construction necessary—plain and ordinary meaning.	<ul style="list-style-type: none"> • Claims 1-7 • Figure 1 • 1:19-25, 33-36, 53-55 • 2:1-4, 41-51 • 3:1-3 • 6:66-7:27 • 8:63-9:5 • 9:17-19, 39-40 • 9:62-63 • 10:18-19 • 10:50-60 • 11:13-20 • 11:42-50 • 12:1-8 • 12:29-37 • 12:60-67 • 13:21-29 • 13:52-59 • 14:17-25 	<ul style="list-style-type: none"> • Chambers Science and Technology Dictionary (1988) at 465. • McGraw-Hill Dictionary of Scientific and Technical Terms 4th Ed. (1989) at 964-65 • OED Online. Oxford University Press, from 2nd Ed. 1989 (“injection” “inject”). • IPR2015-00600, Petition. • IPR2015-00600, Decl. of Benny Freeman.

Exhibit C

Defendants' Proposed Constructions²

Claims(s)	Claim Term/Phrase	Defendants' Proposed Construction	Intrinsic Evidence ³	Extrinsic Evidence
1	whether the preamble is limiting: "A process for preparing high molecular weight polymers, which comprises"	The preamble constitutes a limitation	<ul style="list-style-type: none"> • U.S. Patent No. 5,633,329 [54] (filed Jan. 25, 1996). • U.S. Patent No. 5,633,329 [57] (filed Jan. 25, 1996). • 1:4-12 • 2:5-7 • 2:8-16 • 3:11-12 • 7:32-33 • IPR2015-00600, Patent Owner's Preliminary Response • FH: <i>Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 5 (May 12, 2015).</i> 	<ul style="list-style-type: none"> • M. F. Cunningham et al., <i>Bulk Polymerization in Tubular Reactors I. Experimental Observations on Fouling</i>, 69 CAN. J. CHEM. ENG'R 630 (1991). • U.S. Patent No. 4,530,979 (filed June 15, 1983). • U.S. Patent No. 3,951,934 (filed Sept. 30, 1974) • Jane Clarke & Brian Vincent, <i>Stability of Non- aqueous Microgel Dispersions in the Presence of Free Polymer</i>, 77 J. CHEM. SOC. 1831 (1981). •

² Defendants' preliminary proposed constructions are for the purpose of this litigation only and for no other purpose. Nothing in the Defendants' proposed constructions shall be construed to limit Defendants' right to argue that any claim of the patent-in-suit is invalid. The fact that Defendants have proposed construction of claim terms or elements does not mean that Defendants agree that those terms or elements are amenable to construction, are not indefinite, or otherwise do not meet the requirements under 35 U.S.C. § 112. As previously noted, Defendants further contend that the Patent Owner's (PO's) Preliminary Response to SNF's IPR Petition is intrinsic evidence; Defendants reserve the right to cite PO's Preliminary Response and anything therein as extrinsic evidence to the extent BASF objects in any way to Defendants' use of such Preliminary Response materials as intrinsic evidence.

³ Reference to the '329 patent specification are identified by figure number or patent column and lines separated by a colon. Reference to the '329 patent file history are identified by "FH".

			<ul style="list-style-type: none">• FH: <i>Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600</i>, 28 (May 12, 2015).• <i>Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600</i>, 55 (May 12, 2015).• FH: G.B. Patent No. 1,054,028 p. 2, ll. 103-04 (filed Oct. 30, 1963).• FH: European Patent Application Publication No. 0 374 709 A2 p. 4, ll. 8-9 (filed Dec. 13, 1989).• FH: U.S. Patent No. 3,784,597 col. 2, ll. 40-42 (filed Dec. 16, 1971).• FH: U.S. Patent No. 3,784,597 col. 2, ll. 53-56 (filed Dec. 16, 1971).• FH: U.S. Patent No. 3,784,597 col. 3, ll. 68-69 (filed Dec. 16, 1971).• FH: U.S. Patent No. 3,784,597 col. 4, ll. 41-42 (filed Dec. 16, 1971).	
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			<ul style="list-style-type: none"> • FH: U.S. Patent No. 3,784,597 col. 2, ll. 61-64 (filed Dec. 16, 1971). • FH: U.S. Patent No. 3,784,597 col. 2, ll. 69-73 (filed Dec. 16, 1971). • FH: U.S. Patent No. 3,784,597 col. 5, ll. 4-10 (filed Dec. 16, 1971). • FH: U.S. Patent No. 3,634,944 Abs. (filed June 1, 1970). • FH: U.S. Patent No. 3,634,944 col. 4, ll. 68-69 (filed June 1, 1970). • FH: U.S. Patent No. 3,634,944 col. 6, ll. 41-43 (filed June 1, 1970). • FH: JP 05057181A, Abstract (1993-03-09). 	
1	“removing the gelatinous reaction mixture by injection”	removing the gelatinous reaction mixture by injecting a pressure of at least 2 bar	<ul style="list-style-type: none"> • 1:1-2:4 • 2:61-3:11 • 7:6-9 • 8:30-14:25 (Examples 1-14) • 8:63 • 9:14 • 9:40 • 9:63 • 10:19 • 19:56-57 • 11:18 	<ul style="list-style-type: none"> • The Doubleday Dictionary for Home, School, and Office (1975), at 370 (defining inject as “To force in (a fluid) under pressure”). • Webster’s New World Dictionary of the American Language, 2nd College Edition (1980), at 725 (defining inject as “to force or drive (a fluid) into some passage, cavity, or chamber” and defining injection as “a fuel under pressure forced into a combustion chamber”). • Webster’s Third New International

			<ul style="list-style-type: none"> • 11:49 • 12:7 • 12:35 • 12:66 • 13:27 • 13:58 • 14:22-23 • FH: G.B. Patent No. 1,054,028 p. 2, ll. 107-111 (filed Oct. 30, 1963). • FH: U.S. Patent No. 5,081,215, col. 5, ll. 27-35 (filed Aug. 15, 1989). 	<p>Dictionary of the English Language Unabridged (1993), at 1164 (defining injection as “the introduction under pressure of one substance (as fuel oil, combustion air, or water spray) into a working space (as a diesel cylinder, a gas-turbine combustor, or a steam desuperheater)”).</p> <ul style="list-style-type: none"> • Random House Webster’s College Dictionary (1991), at 693 (defining inject as “to force (a fluid) into a passage, cavity, or tissue”). • The American Heritage Dictionary, 2nd College Edition (1982), at 662 (defining inject as “to force or drive (a fluid) into something”). • U.S. Patent No. 4,530,979 (filed June 15, 1983). •
1	“removing the gelatinous reaction mixture by injection of an inert gas”	removing the gelatinous reaction mixture only by injection of inert gas alone	<ul style="list-style-type: none"> • 1:1-2:4 • 2:61-3:11 • IPR2015-00600, Patent Owner’s Preliminary Response • FH: <i>Patent Owner’s Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329</i>, IPR2015-00600, 2 (May 12, 2015). • FH: <i>Patent Owner’s Preliminary Response to</i> 	<ul style="list-style-type: none"> • U.S. Patent No. 4,530,979 (filed June 15, 1983).

			<p><i>Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 4 (May 12, 2015).</i></p> <ul style="list-style-type: none"> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 5-6 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 6 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 7 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 8 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No.</i> 	
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			<p>5,633,329, IPR2015-00600, 12-13 (May 12, 2015).</p> <ul style="list-style-type: none"> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 14 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 14-15 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 16 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 17 (May 12, 2015).</i> • <i>FH: Patent Owner's Preliminary Response to</i> 	
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			<p><i>Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 24-25 (May 12, 2015).</i></p> <ul style="list-style-type: none">• <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 26 (May 12, 2015).</i>• <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 28 (May 12, 2015).</i>• <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 43 (May 12, 2015).</i>• <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 44 (May 12, 2015).</i>	
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			<ul style="list-style-type: none">• <i>FH: Patent Owner's Preliminary Response to Petition for Inter Partes Review of U.S. Pat. No. 5,633,329, IPR2015-00600, 52 (May 12, 2015).</i>• FH: U.S. Patent No. 3,784,597 col. 3, ll. 70-72 (filed Dec. 16, 1971).• FH: U.S. Patent No. 3,784,597 col. 4, ll. 43-45 (filed Dec. 16, 1971).• FH: European Patent Application Publication No. 0 374 709 A2 p. 2, ll 23-38 (filed Dec. 13, 1989).	
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